

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RONNIE ROWE,
Plaintiff

Case No. 1:12-cv-647
Weber, J.
Litkovitz, M.J.

vs

COUNTY COMMISSIONER
DOUGLAS MALONE, et al.,
Defendants.

ORDER

On September 13, 2012, defendants filed a motion to dismiss the complaint of plaintiff Ronnie Rowe, who is proceeding pro se. (Doc. 3). In the certificate of service, defendants certified that a copy of the motion to dismiss was provided to plaintiff via the Court's electronic filing system (CM/ECF) on the date the motion was filed.¹ (Doc. 3 at 6). On September 14, 2012, the Court notified plaintiff that a motion to dismiss had been filed by defendants in his case and that failure to file a response within 21 days of the date of service set forth in the certificate attached to the motion could result in dismissal of the lawsuit for failure to prosecute. (Doc. 4).

Plaintiff filed a response to the motion to dismiss on September 24, 2012. (Doc. 5). Plaintiff stated he had received the Court's notice, but he had not received a copy of defendants' motion as of September 21, 2012. Plaintiff asked that the Court dismiss defendants' motion due to improper service or, in the alternative, toll the response time until he had been properly served and had been given an opportunity to respond to the motion. Defendants subsequently filed a

¹ Because plaintiff is proceeding pro se, he is not a registered user of the Court's CM/ECF system and service therefore may not be made on him through the system. See Electronic Filing Policies and Procedures Manual for the United States District Court, Southern District of Ohio, Section II. B. 3.

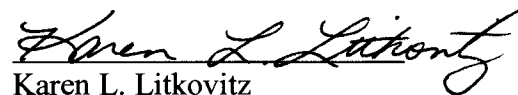
"Notice of Service" on September 28, 2012, stating that the motion to dismiss had been sent to plaintiff by regular mail on September 19, 2012. (Doc. 6). Defendants attached to the notice a copy of an envelope addressed to plaintiff and date-stamped September 19, 2012. (Doc. 6-1).

Pursuant to S.D. Ohio Civ. R. 5.2(a), proof of service of pleadings and other papers required or permitted to be served on a party must be made in compliance with Fed. R. Civ. P. 5(d) and must state the date and manner of service, including the name of the person served and the address to which the service was directed. Proof of service must be fully stated on or attached to the copy of the document served upon a party. *Id.*

Defendants failed to comply with these requirements with respect to their motion to dismiss. Defendants are therefore ORDERED to: (1) serve on plaintiff by regular United States mail a copy of the motion to dismiss with a certificate of service that complies with S.D. Ohio Civ. R. 5.2(a) and Fed. R. Civ. P. 5(d), and (2) file the certificate of service with the Court. Plaintiff shall have 21 days from the date of service set forth in the certificate to file a response to the motion to dismiss.

IT IS SO ORDERED.

Date: 11/13/12


Karen L. Litkovitz
United States Magistrate Judge